

DOCKETED

74c/1030

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF NEW YORK

MIDWAY MANUFACTURING COMPANY : Deposition of
vs. : Ralph Baer
THE MAGNAVOX COMPANY : Thirteenth Day
and : 74 Civ 1657 CBM ton
SANDERS ASSOCIATES, INC. :

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

THE MAGNAVOX COMPANY, et al : Consolidated Actions
vs. : 74 C 1030
BALLY MANUFACTURING : 74 C 2510
CORPORATION, et al : 75 C 3153
----- : 75 C 3933

Continued deposition taken

pursuant to subpoena and notice at the Sanders Associates,
Inc.; Headquarters, Spit Brook Road, Nashua, New
Hampshire; Thursday, February 19, 1976; commencing at
ten o'clock in the forenoon.

FILED

ERNEST W. NOLIN & ASSOCIATES

OCT - 8 1976

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H. STUART CUNNINGHAM, CLERK
UNITED STATES DISTRICT COURT

ORIGINAL

PRESENT:

For Midway Manufacturing Company,
Bally Manufacturing Corporation
and Empire:

Donald L. Welsh, Esq., 135 South
LaSalle Street, Chicago, Illinois

For Attari, Inc.:

Flehr, Hohbach, Test, Albritton &
Herbert, by Edward S. Wright, Esq.,
160 Sansome Street, 15th Floor,
San Francisco, California

For Sanders Associates, Inc. and
Magnavox Company:

James T. Williams, Esq., 77 West
Washington Street, Chicago, Illinois

For Sanders Associates:

Louis Etlinger, Esq. and Richard I.
Seligman, Esq., Daniel Webster
Highway, South, Nashua, New
Hampshire

Stenotype Reporter:

Ronald J. Hayward

RALPH BAER

called as a witness, having been previously sworn, was
further examined and continued his testimony as follows:

(Interrogatories by Mr. Welsh.)

Q. Mr. Baer, yesterday you referred to discussions with

Mr. Rusch and Mr. Harrison regarding the TV manufacturers

putting a jack into the TV set ahead of the RF and IF sections I believe, was that correct? as marked as

A. No, sir, ahead of the video section so as to obviate the need to go ^{through} to IF and RF. *

2 Q. Did any TV manufacturer ever incorporate such a jack
6 into a home TV set? on to the first position, it uses

the first person did MR. WILLIAMS: If you know,

A. Mr. Baer.

7 Q. Is that used consistently? THE WITNESS: Not to my knowledge.

3 Q. (By Mr. Welsh) So that your games for use in home TV
8 sets necessarily had to have the RF and IF sections?

A. That is right.

4 Q. At the time the application for the 285 Patent was

9 filed, did you contemplate applying your TV game con-

A. cept to coin operated devices with CRT displays?

A. I don't think we ever thought in terms of coin operated devices simply because I was not that familiar with the

A. use of amusement devices. At least I wasn't at that

A. time. The use of the amusement devices with the public.

As I testified earlier, we certainly discussed the

Q. application of such things as good interactive TV hockey games to a bar environment.

Q. Referring to the Declaration, Power of Attorney, and

Assent of Assignee in the file wrapper and contents of reissue Patent number 28, 598 which was marked as

Q. exhibit 42, I believe you stated that you read that with before you signed it? application?

A. Yes I did. I stated that I could remember having been at

Q. Calling your attention to the first portion, it uses the first person plural "we" does it not? more.

A. Yes, it does. how far apart those meetings were?

Q. Is that used consistently throughout?

A. I wouldn't know without rereading it. issue applications

Q. I call your attention to the second page starting in

A. the middle.

A. No, the singular form is used in the middle of that page.

Q. And also near the bottom, is it not?

A. Yes. the second before or after the application was

Q. Did you ever notice that discrepancy before I just

A. called it to your attention?

A. No I don't know that it is a discrepancy without care-

A. fully reading it again. I undoubtedly never saw it

Q. before simply because it still doesn't bother me.

Q. So if you had noticed it earlier, you wouldn't have

Q. said anything anyway? etings at which the reissue appli-

A. I don't know what I would have done; I can't say, but

I signed this thing as an individual, why should I

A. object to the use of the singular form.

Q. You stated that you had two meetings with attorneys with respect to the reissue application?ings, but you don't

A. I believe I stated that I could remember having been at

A. at least two meetings; I don't know how many meetings

Q. there were altogether, there may have been more. meeting

Q. Do you remember how far apart those meetings were?

A. No. Williams was present at one of the meetings, I don't

Q. Were they around the time that the reissue applications

Q. were filed? remember specifically who was present from

A. Yes. Sanders Patent Department?

Q. Was the first before or after the application was filed?

A. Before. one else present at either meeting? - yes?

Q. Was the second before or after the application was time
filed?

A. Yes. her Mr. Harrison nor Mr. Rusch?

Q. After? least I can't recall their being there.

A. Before. recall the gist of the discussion at either meet

Q. Also before?

A. Yes. MR. WILLIAMS: Well I object to

Q. Did you attend any meetings at which the reissue appli-
cations were discussed after the applications were

filed?

MR. WELSH: I believe I asked if

A. None that I can recall; not what was the gist. Do you

Q. Did you state that someone from the Sanders Patent Department was present at both meetings, but you don't remember exactly who? may say yes or no.

A. I believe that is right. WE WITNESS: Yes I do.

Q. And that Mr. Williams was present at the second meeting?

A. I don't believe I said that; I said I think that

A. Mr. Williams was present at one of the meetings, I don't know which.

Q. Do you now remember specifically who was present from the Sanders Patent Department?

A. No I do not specifically remember.

Q. Was anyone else present at either meeting? both meetings?

A. I don't recall; I believe I testified to that sometime ago, as calling for information which is protected

Q. Neither Mr. Harrison nor Mr. Rusch?

A. No, at least I can't recall their being there.

Q. Do you recall the gist of the discussion at either meeting?

MR. WILLIAMS: I am contending

that Sanders Associate MR. WILLIAMS: Well I object to

the question as calling for information which is pro-

ected by the attorney-client privilege. Associates I

a client of whom? MR. WELSH: I believe I asked if he recalled the gist, not what was the gist. Do you still object to the question? at that meeting.

MR. WILLIAMS: Mr. Baer, if you recall the gist, you may say yes or no.

THE WITNESS: Yes I do..

Q. (By Mr. Welsh) Do you recall the gist at the first of meeting?

A. No I do not recall what was said at various meetings specifically. MR. WELSH: Do you contend that

Q. But you do recall the gist of what was said at both client meetings? in those circumstances?

A. Yes. MR. WILLIAMS: Yes we certainly d

Q. What was the gist of the discussions at both meetings?

not to answer the que MR. WILLIAMS: I object to the question as calling for information which is protected

Q. by the attorney-client privilege. either of those meet-

ings there was any ex MR. WELSH: Are you contending that Mr. Baer is a client?

MR. WILLIAMS: I am contending that Sanders Associates is a client and Mr. Baer is an employee of Sanders Associates. questions.

Q. (By Mr. Welsh) At MR. WELSH: Sanders Associates is

Q. a client of whom? in either the 264 patent or the 285 patent?

MR. WILLIAMS: Of the persons Mr. Baer identified as being at that meeting.

Q. witness not to answer MR. WELSH: You mean a client of

the personnel of the patent department?

Q. term TV receiver? MR. WILLIAMS: Yes, sir.

MR. WELSH: And also a client of

yours? not to answer for the same reason.

Q. (By Mr. Welsh) Did you MR. WILLIAMS: Yes, of the term

standard TV or television? MR. WELSH: Do you contend that

Mr. Baer is properly the subject of the attorney-client privilege in those circumstances? reason.

Q. (By Mr. Welsh) Did you MR. WILLIAMS: Yes we certainly do.

respect to the reissue MR. WELSH: Do you instruct him

not to answer the question? WILLIAMS: And I instruct you

not to answer for the MR. WILLIAMS: Yes I do.

Q. (By Mr. Welsh) I ask also if at either of those meetings there was any explanation as to why the reissue

applications were to be filed?

Q. After you received the MR. WILLIAMS: And again I am

instruct the witness not to answer for the same reasons?

A. as discussed with the previous questions.

Q. (By Mr. Welsh) At those meetings, did you discuss the

terminology used in either the 284 patent or the 285 patent?

MR. WILLIAMS: I instruct the witness not to answer for the same reason.

Q. (By Mr. Welsh) Did you discuss the meaning of the term TV receiver?

MR. WILLIAMS: I instruct the witness not to answer for the same reason.

Q. (By Mr. Welsh) Did you discuss the meaning of the term standard TV or television receiver?

MR. WILLIAMS: I instruct the witness not to answer for the same reason.

Q. (By Mr. Welsh) Did you discuss anything else with respect to the reissue applications?

MR. WILLIAMS: And I instruct you not to answer for the same reason.

Q. (By Mr. Welsh) You received a subpoena to appear here for your deposition, did you not?

A. That is right.

Q. After you received the subpoena, did you do anything in preparation for giving your testimony at this deposition?

A. No I did not.

Q. You did not review any papers that you had collected?

A. No I don't believe in cramming for exams, Mr. Welsh.)

Q. After you received the subpoena and before you actually appeared, did you discuss your testimony with anyone?

A. I am sorry, I missed the first words; did you say after I first appeared?

Q. No, after you received the subpoena and before you first appeared to give your deposition.

A. Well do you mean the impending testimony, there was no testimony at that point?

Q. Yes, the testimony you expected to give?

A. Only to the extent that I received some general instructions on conduct and behavior ---

A. I don't remember. MR. WILLIAMS: Mr. Baer, the question requires only a yes or no answer.

Friday? THE WITNESS: The answer is yes.

A. Yes. MR. WELSH: Please let the witness answer and do not give him instructions at this time?

the previous Wednesday MR. WILLIAMS: I think I just wanted to make sure that Mr. Baer understood the question.

Q. What general instruction? MR. WELSH: Again I ask you not to coach the witness while he is giving his testimony. Could I have the witness' answer back please?

attorney-client privilege (Whereupon, the previous answer

Q. (By Mr. Welsh) Did you read back by the reporter?)

Q. (By Mr. Welsh) Who gave you those instructions?

A. Mr. Williams.

Q. When did he give them to you?

A. Sometime prior to the start of the taking of my deposition. Behavior, was anything else said about your testimony?

Q. When you say sometime, do you mean on the day that you started to give your testimony?

A. I don't believe so, sometime prior to that date.

Q. A long time prior or a short time prior?

A. A short time prior. testimony you had given or the testimony

Q. In the same week?

A. I don't remember.

Q. Do you recall that your deposition commenced on a

Q. Friday? this one occasion?

A. Yes.

Q. And I believe the depositions at Sanders commenced on

A. the previous Wednesday, was it prior to that Wednesday?

A. I don't recall. your testimony -- strike that. When was

Q. What general instructions did Mr. Williams give you?

A. I can't recall specific. MR. WILLIAMS: I object to the question as calling for information protected by the

Q. attorney-client privilege. your deposition or other

Q. (By Mr. Welsh) Did you discuss your impending testimony

A. with anyone else, prior to the commencement of your

Q. deposition? All the nature of your discussion?

A. No, sir.

Q. When you were given the general instructions on conduct and behavior, was anything else said about your testimony?

question so far as it MR. WILLIAMS: I object to the question as calling for information protected by attorney-client privilege. I need not answer that ques-

Q. (By Mr. Welsh) After your deposition commenced, did you

Q. discuss either the testimony you had given or the testi-

A. mony that you might yet give as your deposition progressed?

A. Yes: when did you have your discussion?

Q. On more than one occasion? Individuals who were with me at

A. Yes. one time during the taking of the deposition.

Q. How many occasions?

A. I have no idea.

Q. Did you discuss your testimony -- strike that. When was the first occasion?

A. I can't recall specifically instances. I can't answer

A. that question.

Q. Was it during a session of your deposition or after a

A. sessions had been completed say at the end of a day?

A. I don't remember, Mr. Welsh. Has you have discussed you?

Q. Do you recall the nature of your discussions? given or

A. Yes. Not to give?

Q. What was the nature of the discussions?

Q. Did these discussions MR. WILLIAMS: I object to the question so far as it calls for any information which is protected by the attorney-client privilege and I caution the witness that he need not answer that question insofar as it requests that kind of information.

Q. (By Mr. Welsh) What was the nature of the discussion?

A. I have just been instructed not to answer the question,

Q. Mr. Welsh. Do occur at the end of a day or your testimony?

Q. With whom did you have your discussions?

A. With one or more of the individuals who were with me at any one time during the taking of the deposition.

Q. Mr. Williams? I find the question vague?

A. Mr. Williams. MR. WELSH: The occurrence of

Q. Mr. Seligman? the end of a day of deposition.

A. Yes. THE WITNESS: I find that hard to

Q. Mr. Anderson? Oh, yes.

A. I don't recall discussions occur prior to the commence-

Q. Mr. Etlinger? question of your deposition on a particular

A. Probably.

Q. Was there anyone else with whom you have discussed your testimony either as to what testimony you had given or expected to give?

A. No. Each discussion that occurred during a recess or at

Q. Did these discussions occur on a daily basis during the taking of your deposition? Just given?

MR. WILLIAMS: You may answer the question, Mr. Baer. no foundation that the witness

remembers that happens THE WITNESS: I'd say yes.

Q. (By Mr. Welsh) Did they occur sometimes during recesses?

A. Yes.

THE WITNESS: First of all, I

Q. Did they also occur at the end of a day of your testimony?

A. Yes. Second, I thought I was instructed not to

Q. And was that on a daily basis?

MR. WILLIAMS: Was that on a daily basis; I find the question vague? on that question

MR. WELSH: The occurrence of the discussions at the end of a day of deposition.

THE WITNESS: I find that hard to recall, probably, yes. and answer were read back by the

Q. Did any of the discussions occur prior to the commencement of or resumption of your deposition on a particular

day? really on those occasions?

A. Yes.

Q. And was that also on more or less a daily basis?

A. More or less, yes. MR. WILLIAMS: I object to the

Q. In each discussion that occurred during a recess or at the end of a day of your deposition, was the discussion about the testimony you had just given?

MR. WILLIAMS: I object to the question. There is no foundation that the witness remembers what happened in each of the discussions about which he has been testifying. WITNESS: Yes.

THE WITNESS: First of all, I can't remember what we talked about at each and every occasion. Secondly, I thought I was instructed not to answer the question dated March 3, 1971, which is kept in the files of Sander MR. WELSH: I don't think signature of Mr. Williams gave you that instruction on that question. Have also brought also MR. WILLIAMS: Would you read the questions back please?

(Whereupon, the previous question that was asked as well and answer were read back by the reporter.) WITNESS: That is correct.

Q. (By Mr. Welsh) Do you remember what was talked about

generally on those occasions? or are they so marked

A. Yes. in accordance with our previous agreement. The original

Q. What was that? It is not so marked, but is shown to you also under the provision MR. WILLIAMS: I object to the

question as calling for information protected by the attorney-client privilege and instruct the witness not to answer.

MR. WILLIAMS: And Mr. Wright, the same applies to you MR. WELSH: Mr. Seligman, have you

received a copy of the original license agreement between Magnavox and Sanders? The terms of that agree-

ment entered into with MR. SELIGMAN: Yes. and I assume you will accept this MR. WELSH: Do I understand

correctly that what you have handed me is a copy of an original executed copy of this agreement between a Magnavox and Sanders dated March 3, 1971, which is kept in the files of Sanders and bears the original signatures?

MR. SELIGMAN: That is correct. I have also brought along a copy of the original agreement for comparison. As by Mr. Seligman and exhibit 43 does appear to be a true copy MR. WELSH: This is the agreement, that was marked as exhibit 43 I believe? of an agree-

ment between Magnavox MR. WILLIAMS: That is correct.

Mr. Welsh, the copies of the agreement are being

supplied under the protective order and are so marked in accordance with our previous agreement. The original of the agreement is not so marked, but is shown to you also under the provisions of the protective order.

MR. WELSH: I accept it subject to those provisions. The effective date of January 27, 1972 has been produced under MR. WILLIAMS: And Mr. Wright, the same applies to you. A formal protective order has not been entered into with you, but Mr. Herbert has previously agreed to abide by the terms of that agreement entered into with Bally Manufacturing and I assume you will accept this under that same condition? or to mark now as exhibit 4 MR. WRIGHT: Yes. agreement furnished by Mr. Seligman MR. WELSH: Why don't we take a five minute recess. to keep both of the originals of which these copies are (Whereupon, a recess was taken.) then marked as exhibit MR. WELSH: Let the record show that I have compared exhibit 43 with the original document handed to me by Mr. Seligman and exhibit 43 does appear to be a true copy. During the recess, Mr. Seligman, you also handed me an original and a copy of an agreement between Magnavox and Sanders having an effective date of January 27, 1972. I have compared the copy to

the original and find that the copy is a true copy. Do I understand correctly that that original also came from Sanders file?

MR. WELSH: Thank you.

MR. SELIGMAN: That is correct.

MR. WILLIAMS: And again the agreement having the effective date of January 27, 1972, has been produced under the protective order and copies are being made under the protective order, and I assume that that is so accepted by Mr. Welsh and Mr. Wright.

MR. WELSH: That is true.

MR. WRIGHT: That is correct in March of 1971 with Mr. Welsh. I ask the reporter to mark now as exhibit 44 the copy of the agreement furnished by Mr. Seligman. I understand, Mr. Seligman, that Sanders desires to keep both of the originals of which these copies are made in its files without having them marked as exhibits?

MR. SELIGMAN: That is correct.

MR. WELSH: Do you have an extra copy for me for my files of that original?

MR. SELIGMAN: Both of them?

MR. WELSH: No. I have the one to which has already been marked.

refreshed your recall. MR. SELIGMAN: I gave you two, so take which one you want.

A. Sure.

MR. WELSH: Thank you.

And how does it refresh (Whereupon, exhibit number 44 was marked for identification.)

MR. WELSH: That completes my questioning of Mr. Baer at this time. --- I am sorry, I found one other item that I intended to bring up this morning.

Q. I believe you testified, Mr. Baer, that with respect to contacts with Magnavox, that a trip to Fort Wayne in March of 1971 with Mr. Harrison was substantially the extent of the contact with them providing information regarding exhibit 35 and certain diagrams relating to it?

Q. The remainder of the MR. WILLIAMS: I don't know whether Mr. Baer used the phrase substantially the extent, but he did testify concerning his contact with Magnavox. I have no recollection of ever seeing their

Q. (By Mr. Welsh) Is that statement true?

A. Generally, yes. I do recollect sitting in Fort

Q. I show you a copy of a document which was furnished to me from Sanders file number 637 and I ask if this

refreshes your recollection as to any other contacts that you have had with Magnavox?

A. Sure. Really you did see their overlays and playing their

Q. And how does it refresh your recollection?

A. I am still reading the documents, Mr. Welsh, to try to recollect just exactly what happened. I had completely

Q. forgotten about that visit. I believe in my mind some of the things I reported having done there in June I had thought we had accomplished during the earlier visit

A. in March. This, although the contact report which is the first page refers to the purpose of the visit being

to solve technical problems and assure ourselves that their equipment is in acceptable operating condition, I am almost certain we never got to see any of their equipment. Is an exhibit?

Q. The remainder of the document does not indicate whether or not you saw it? MR. WELSH: I ask the reporter to

A. No, it doesn't and I think it doesn't because it didn't happen. I have no recollection of ever seeing their equipment until March of the following year when it was shown to the press. I do recollect sitting in Fort Wayne and writing out suggestions for what amounts to software changes, new games, some of which are listed,

on the last page of this document here while Harrison was off talking to the engineers. S: Are there any

Q. Apparently you did see their overlays and playing instructions? position of Mr. Baer at this time?

A. I don't remember that. That is what it says here though, doesn't it. which you instructed him not to answer is one

Q. I call your attention to paragraph four, it says, "At present they have five demo equipments in process, two are essentially completed. One was used during our visit to examine its performance." ing new notices and

A. I have no recollection, it must have happened, but I ing just simply don't remember seeing that piece of gear.

MR. WELSH: Mr. Seligman, may we mark the copy of this report which came out of your file 637 as an exhibit? R. WELSH: Do you have any cross examination or direct MR. SELIGMAN: Yes.

MR. WELSH: I ask the reporter to mark this as exhibit 45-1, 45-2 and 45-3. response was no to the question abc (Whereupon, exhibit 45-1, 2 and 3 were marked for identification.): I have no questions

on either direct or MR. WELSH: That does complete my questioning of Mr. Baer at this time. I do, however, reserve the right to recall him. Thank you very much,

Mr. Baer.

MR. WILLIAMS: Are there any circumstances which would prevent you from completing the deposition of Mr. Baer at this time?

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough
SS. MR. WELSH: The matters of the questions which you instructed him not to answer is one subscribed and sworn to before me this 10th day of July 1981. Also it may develop that as a result of other testimony given at depositions here, it may be desirable to ask him about some subject matter that was not covered and in order to avoid serving new notices and so forth, in view of the short discovery time remaining, I do not wish to terminate him at this time.

MR. WILLIAMS: Well we have no cross-examination at this time.

MR. WELSH: Do you have any cross-examination or direct examination?

MR. WRIGHT: No.

MR. WILLIAMS: The response was no to the question about direct?

MR. WRIGHT: I have no questions on either direct or cross of Mr. Baer at this time.

MR. WELSH: Thank you, Mr. Baer.

THE JUDGE OF THE DISTRICT COURT
COUNTY OF PONTIAC

10.

Ralph H. Bder

Deponent

public within and for the State of New Hampshire, do hereby
STATE OF NEW HAMPSHIRE)
certify that Ralph H. Bder SS. is called as a witness by and on
COUNTY OF Wellsborough
behalf of the defendant in the above-entitled action now

Subscribed and sworn to before me this 10th day of
pending in the United States District Court for the Southern
May 19 76.

Marilyn E. Trapalis
Justice of the Peace and/or
Notary Public

Marilyn E. Trapalis

Northern Division; that the said witness was duly sworn to
testify to the truth, the whole truth and nothing but the truth;
that thereupon and while the said witness was so sworn,
the said deposition was taken down by a Notary Public
at the time and place above stated and was thereafter reduced
to typewriting.

IN WITNESS WHEREOF, I have here-

upon subscribed my hand and affixed my seal of office this
10th day of February, 1976.

Marilyn E. Trapalis
Notary Public
My Commission Expires October 19, 1980

My commission expires October 19, 1980.